IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 6, 2006

STATE OF TENNESSEE v. MICHAEL M. WILLIAMS

Appeal from the Circuit Court for Warren County
No. M-9590 Larry B. Stanley, Jr., Judge

No. M2005-02122-CCA-R3-CD - Filed July 12, 2006

The Defendant, Michael M. Williams, appeals from the order of the trial court revoking his probation and ordering that he serve ninety days of his sentence in the county jail. On appeal, the Defendant argues that the trial court should have recused itself from hearing the Defendant's probation violation charge. Because we conclude that the record is inadequate to allow appellate review of this issue, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and J.C. MCLIN, J., joined.

Michael M. Williams, Pro Se.

Paul G. Summers, Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; Dale Potter, District Attorney General; and Larry Bryant, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

It appears from the record that on March 17, 2005, the Defendant entered a plea of guilty to driving on a revoked driver's license, second offense. For this Class A misdemeanor, the Defendant was sentenced to serve eleven months and twenty-nine days in the county jail, with the sentence to be served on probation after he served seventy-two hours in confinement.

On June 14, 2005, a probation violation warrant was issued alleging that the Defendant violated his probation because he tested positive for marijuana on June 10, 2005. The warrant stated that the Defendant admitted that he used marijuana on or about June 2, 2005.

A probation revocation order was entered on August 16, 2005. This order states that a probation revocation hearing was conducted on August 10, 2005. The order reflects that the

Defendant was found to have violated the terms of his probation by using illegal drugs. The order directed that the Defendant serve ninety days in the county jail, after which he was to be returned to supervised probation. In addition, his probationary sentence was extended by three months. It is from the order of the trial court revoking his probation that the Defendant appeals.

A trial judge is vested with the discretionary authority to revoke probation if a preponderance of the evidence establishes that a defendant violated the conditions of his or her probation. See Tenn. Code Ann. §§ 40-35-310, -311(e); State v. Shaffer, 45 S.W.3d 553, 554 (Tenn. 2001). "The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment." State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

When a probation revocation is challenged, the appellate courts have a limited scope of review. This Court will not overturn a trial court's revocation of a defendant's probation absent an abuse of discretion. See Shaffer, 45 S.W.3d at 554. For an appellate court to be warranted in finding that a trial judge abused his or her discretion by revoking probation, "there must be no substantial evidence to support the conclusion of the trial court that a violation of the conditions of probation has occurred." Id.

The record on appeal is sparse. It consists only of the technical record and what appears to be an exhibit introduced at the probation revocation hearing conducted on August 10, 2005. This exhibit appears to be a drug screening record indicating that the Defendant tested positive for marijuana. It is apparently signed by the Defendant and includes the statement that he admitted that he used marijuana on or about June 2, 2005.

In this appeal, the Defendant argues that the trial judge for his probation revocation hearing "handed down an unusually harsh sentence that was obviously based on our animosity for each other . . ." The Defendant argues that the trial judge should have recused himself because a few years earlier, the trial judge represented the Defendant in a divorce case in which the attorney-client relationship had not been good. The State argues that the judgment of the trial court should be affirmed because the Defendant has failed to present a record which allows meaningful appellate review of the trial court's decision. We must agree with the State.

The record on appeal is simply inadequate to address the issue presented by the Defendant. When an accused seeks appellate review of an issue in this Court, it is the duty of the accused to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issue. Tenn. R. App. P. 24(b); State v. Bunch, 646 S.W. 2d 158, 160 (Tenn. 1983); State v. Matthews, 805 S.W. 2d 776, 784 (Tenn. Crim. App. 1990). Where the record is inadequate to conduct a review, the decision of the trial court is presumed to be correct. State v. Ivy, 868 S.W. 2d 724, 728 (Tenn. Crim. App. 1993).

From the record before us, it does not appear that the Defendant ever asked the trial judge to recuse himself. It appears that an evidentiary hearing was conducted on the probation violation

warrant, but a transcript of the hearing is not contained in the record. This Court has no way to ascertain what transpired during the hearing conducted by the trial court.

The record on appeal in this case does not contain an accurate and complete account of what transpired in the trial court with respect to the revocation of the Defendant's probation. In the absence of a complete and adequate record, we must presume that the judgment of the trial court was correct.

The judgment of the trial court is accordingly affirmed.

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DAVID H. WELLES, JUDGE